

Part 5

Performance

70A-2-501 Insurable interest in goods -- Manner of identification of goods.

- (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs
 - (a) when the contract is made if it is for the sale of goods already existing and identified;
 - (b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;
 - (c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.
- (2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.
- (3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

Enacted by Chapter 154, 1965 General Session

70A-2-502 Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.

- (1) Subject to Subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:
 - (a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or
 - (b) in all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.
- (2) The buyer's right to recover the goods under Subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.
- (3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Amended by Chapter 252, 2000 General Session

70A-2-503 Manner of seller's tender of delivery.

- (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time, and place for tender are determined by the agreement and this chapter, and in particular:

- (a) tender must be at a reasonable hour, and if it is of goods, they must be kept available for the period reasonably necessary to enable the buyer to take possession; but
 - (b) unless otherwise agreed, the buyer must furnish facilities reasonably suited to the receipt of the goods.
- (2) Where the case is within the next section, respecting shipment tender requires that the seller comply with its provisions.
- (3) Where the seller is required to deliver at a particular destination, tender requires that he comply with Subsection (1) and also in any appropriate case tender documents as described in Subsections (4) and (5) of this section.
- (4) Where goods are in the possession of a bailee and are to be delivered without being moved:
- (a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but
 - (b) tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Chapter 9a, Uniform Commercial Code - Secured Transactions, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.
- (5) Where the contract requires the seller to deliver documents:
- (a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set as provided in Subsection 70A-2-323(2); and
 - (b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

Amended by Chapter 42, 2006 General Session

70A-2-504 Shipment by seller.

- (1) Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:
- (a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case;
 - (b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
 - (c) promptly notify the buyer of the shipment.
- (2) Failure to notify the buyer under Subsection (1)(c) or to make a proper contract under Subsection (1)(a) is a ground for rejection only if material delay or loss ensues.

Amended by Chapter 306, 2007 General Session

70A-2-505 Seller's shipment under reservation.

- (1) Where the seller has identified goods to the contract by or before shipment:

- (a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named; and
 - (b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery as provided in Subsection 70A-2-507(2), a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.
- (2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

Amended by Chapter 42, 2006 General Session

70A-2-506 Rights of financing agency.

- (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.
- (2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

Amended by Chapter 42, 2006 General Session

70A-2-507 Effect of seller's tender -- Delivery on condition of payment.

- (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.
- (2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

Enacted by Chapter 154, 1965 General Session

70A-2-508 Cure by seller of improper tender or delivery -- Replacement.

- (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.
- (2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Enacted by Chapter 154, 1965 General Session

70A-2-509 Risk of loss in the absence of breach.

- (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

- (a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation as provided in Section 70A-2-505; but
- (b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.
- (2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:
 - (a) on his receipt of possession or control of a negotiable document of title covering the goods;
 - (b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or
 - (c) after his receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in Subsection 70A-2-503(4)(b).
- (3) In any case not within Subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.
- (4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval as provided in Section 70A-2-327 and on effect of breach on risk of loss as provided in Section 70A-2-510.

Amended by Chapter 42, 2006 General Session

70A-2-510 Effect of breach on risk of loss.

- (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.
- (2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.
- (3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

Enacted by Chapter 154, 1965 General Session

70A-2-511 Tender of payment by buyer -- Payment by check.

- (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.
- (2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.
- (3) Subject to the provisions of this act on the effect of an instrument on an obligation, Section 70A-3-310, payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Amended by Chapter 237, 1993 General Session

70A-2-512 Payment by buyer before inspection.

- (1) Where the contract requires payment before inspection, nonconformity of the goods does not excuse the buyer from so making payment unless:
 - (a) the nonconformity appears without inspection; or
 - (b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions under Subsection 70A-5-109(2).
- (2) Payment pursuant to Subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Amended by Chapter 241, 1997 General Session

70A-2-513 Buyer's right to inspection of goods.

- (1) Unless otherwise agreed and subject to Subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.
- (2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.
- (3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (Subsection (3) of Section 70A-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides
 - (a) for delivery "C.O.D." or on other like terms; or
 - (b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.
- (4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Enacted by Chapter 154, 1965 General Session

70A-2-514 When documents deliverable on acceptance -- When on payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

Enacted by Chapter 154, 1965 General Session

70A-2-515 Preserving evidence of goods in dispute.

In furtherance of the adjustment of any claim or dispute:

- (1) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and
- (2) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

Enacted by Chapter 154, 1965 General Session